

REMARKS

Reconsideration of this application is requested.

Claims 1-5, 10, and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,382,140 to Wexler.

Regarding Claims 1 and 13, Wexler teaches a protective animal collar assembly and method comprising: a) a hollow hemispherical member having equatorial and polar regions (#12 and 14), irregular opening (#26) therein extending from said polar region to near proximity with said equatorial region; b) a visor member (#18) having a parabolic notch along one edge corresponding at least in part to a portion of said irregular opening, pivotally attached to said hemispherical member; and c) a means for securing (#20) said visor in position relative to said hemispherical member.

Regarding claims 1 and 13, a close reading of the Wexler '140 patent clearly indicates it is a "global" animal head covering (having two hemispherical halves comprising a globe) used during veterinary examinations. At no time does the '140 patent make reference to the use of a single hemispherical member (half of a sphere) being used alone as an animal E-collar. Items 12 and 14 referenced by examiner are hemispherical portions 12 & 14 and not equatorial and Polar Regions 12 and 14 as suggested. The Wexler '140 patent teaches the use of a "globular enclosure" having both upper and lower hemispherical members for an entirely different use (enclosing an animal's head) than that claimed in the instant application for a protective collar. The fact that both apparatus have eventually the same means for securing the muzzle and e-collar to the animal's neck is irrelevant.

To establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). "All words in a claim must be considered in judging the patentability of that claim against the prior art." In re Wilson, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). If an independent claim is non-obvious under 35 U.S.C. 103, then any claim depending there from is non-obvious. In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).

The cited prior art clearly teaches and claims a "globular enclosure" having two combined hemispherical portions and not a single "hemispherical member" as disclosed by applicant and used for a different purpose.

A globular head covering having a hemispherical shape can also be one-piece units as seen by the Wexler patent 6,082,309. However, neither the '309 or the '104 apparatus can be used as claimed and taught for the purpose disclosed by applicant without modification such as disassembly and discarding a portion of the assembly and providing a means for removing the sharp edges around the rim resulting

from such disassembly. Only with hindsight can one make the leap to a conclusion that a portion of the "104 apparatus as taught and claimed could be used for a different purpose such as an e-collar with some modifications.

Combinations of elements known within the art may be considered as obvious but contractions of elements from a combination for an entirely different use are not obvious.

With regard to claim 13 (a method of use claim), the claim depends on the structural aspect of a single hemispherical member and not a globular head covering having two combined hemispherical members. Therefore, the claim does not recite each and every element as taught or suggested by the cited reference.

Regarding Claim 2, Wexler teaches the visor member at least partially covers said irregular opening in said hemispherical member (#18 and 26).

Regarding Claim 3, Wexler teaches the parabolic notch is disposed adjacent said polar region defining a parabolic opening between said visor member and said hemispherical member (Fig. 3 and 4).

Regarding Claim 4, Wexler teaches the means for securing are hook and latch members strategically located adjacent said parabolic opening (#20 and 22).

Regarding Claim 5, Wexler teaches it comprises protective edge moldings (Perimeter #26).

Regarding claim 5 Item 26 in the Wexler '104 patent is a pear shaped opening and not a protective edge molding as suggested by examiner. Therefore, claim 5 is novel in view of the cited reference

Regarding Claim 10, Wexler teaches a protective animal collar assembly comprising: A hollow hemispherical member having a polar region (#12 and 14) and equatorial region defined by the major diameter, and an irregular shaped aperture (#26), a portion of which is parabolic extending from said polar region to near proximity with said equatorial region, a visor (#18) having a parabolic notch centrally located along one edge pivotally attached to said hemispherical member at said major diameter said notch corresponding to the parabolic portion of said hemispherical member defining a parabolic opening there between, and a means (Fig. 5 #40) for variably fixing said visor relative to said hemispherical member, said hemispherical member having means for attaching cylindrical and conical extension members.

Regarding claim 10 as discussed under claim 1 the '104 patent teaches and claims a globular head covering having "upper and lower hemispherical portions" and does not teach or claim a single hemispherical member used for the purpose disclosed by applicant. Further the cited reference Wexler '104 does not teach or claim a means for attaching cylindrical or conical extension members and thus not a proper rejection

under 35 U.S.C.102. Item 40 is merely a screw for attaching one hemispherical portion 12 to the other 14 and not a means for fixing the visor as suggested. There is no mention of a cylindrical or conical member anywhere in the cited reference much less a means for attaching such members.

Claims 6, 11, 14,16, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,382,140 to Wexler in view of U.S. Patent No. 6,082,309 to Wexler. Wexler '140 is silent on a cylindrical ring member having a major diameter equivalent to that of said hemispherical member removably attached to said hemispherical member at said equatorial region. However, Wexler '309 teaches a cylindrical member having a major diameter equivalent to that of the hemispherical member and removably attached to the equatorial region (Wexler '309 #54). It would have been obvious to one of ordinary skill in the art to modify the teachings at the time of the invention since the modification is merely and engineering design choice involving the selection of an alternate equivalent means of securing the two hemispherical portions together for ease of assembly and manufacturing.

There seems to be some confusion here. The ring 54 alluded to in the Wexler '309 patent is a polymeric ring 54 used to secure the upper and lower half portions 50 and 52 together. It should be noted that the upper and lower portions are not hemispherical and the muzzle is not globular in Fig. 5. This patent is silent regarding the use of a cylindrical or conical ring for a reason; it doesn't use or require them. Secondly, there is no mention of a cylindrical or conical member in the Wexler'309 patent. In addition, applicant's instant disclosure does not use a polymeric ring to secure two (non-hemispherical) hemispherical member together as suggested in the rejection. In the instant invention, means are provided for attaching a cylindrical ring member to the single hemispherical member claimed in Claim 1. The ring member 54 in the Wexler '309 patent is not cylindrical, if anything it is a length of half-round (not cylindrical) or U-shaped rubber molding and forms a ring only when installed and could not be used for the purpose cite in the instant application. The ring member 54 is a strip and is not endless and thus not a ring except when installed. The ring used in the instant invention is clearly cylindrical in shape by definition it is a cylinder having inner and outer walls and having length. The cylindrical ring in this case is being secured to the hemispherical member by screws and does not retain anything.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,382,140 to Wexler in view of U.S. Patent No. 4,200,057 to Agar. Wexler is silent on the step of extending said shell by attaching a conical ring member. However, Agar teaches that it is old and notoriously well-known to place a conical member extension around an animal's head (Agar Fig. 5). It would have been obvious to one of ordinary skill in the art to modify the teachings of Wexler with the teachings of Agar to control movement of the head but allowing the animal the ability to access food readily.

It is not understood how claim 15 can be rejected under 35 U.S.C. 103(a) when it is

dependent on claim 13 which is rejected only under 35 U.S.C. 102 and not under 35 U.S.C. 103(a). It is also not understood how a methods claim can be rejected under 35 USC 102. Since the cited reference of Wexler under 35 USC 102 does not teach or claim the same structure or use for the instant invention.

As argued under Claim 1 the method of claim 13 utilizes the structure of claim 1 and claims the steps or method for using an apparatus different from the cited reference.

The teaching of Agar are irrelevant in this case since claim 15 is dependent on claim 13 which also includes structure patentably distinct from the teachings of Agar. Simply because they both are applied to an animals neck does not make them obvious. The Wexler '309 patent was clearly patentably distinct and unobvious in view of Agar and therefore any sub specie thereof should also be unobvious as well.

Allowable Subject Matter

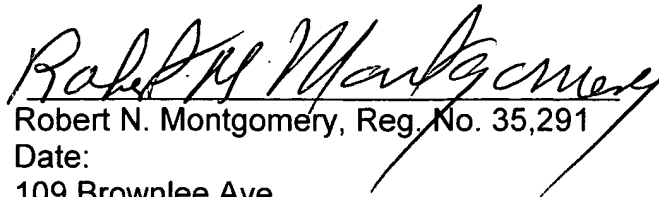
Claims 7-9, 12, and 18-19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Inasmuch as each of the rejections have been overcome by the amendment to the claims and through arguments relating thereto, and all of the examiner's suggestions and requirements have been satisfied, it is respectfully requested that the rejections be withdrawn and that this application be passed to issue.

Should the examiner feel that a telephone conference would advance this application, she is encouraged to contact the undersigned at the telephone number listed below.

Please contact the submitter if any fees are due.

Respectfully submitted,



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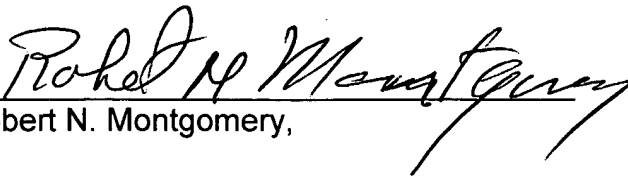
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